

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAWN BALL,	:	Civil No. 1:12-cv-814
Plaintiff	:	
	:	(Chief Judge Kane)
v.	:	
	:	(Magistrate Judge Carlson)
LT. HUMMEL, <u>et al.</u>,	:	
Defendants	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Defendants filed a motion to revoke Plaintiff's in forma pauperis status on July 6, 2012. (Doc. No. 21.) On July 30, 2012, Magistrate Judge Carlson issued a Report and Recommendation in which he recommended that the motion be granted. (Doc. No. 33.) Plaintiff was advised that objections to the Report and Recommendation were due on or before August 16, 2012. (Id.) Although Plaintiff has filed other documents in the interim, she has declined to respond to the Report and Recommendation. Upon a review of the Report and Recommendation, the Court agrees that this Court's dismissals of two of Plaintiff's prior actions, Ball v. Butts, No. 1:11-cv-1068 (M.D. Pa.) and Ball v. Hartman, No. 1:09-cv-844 (M.D. Pa.), and the dismissal of a subsequent appeal in one of those actions, Ball v. Butts, No. 11-2862, 2011 WL 4375782 (3d Cir. Sept. 21, 2011), constitute three strikes for purposes of the Prison Litigation Reform Act. Notably, the Court agrees with Magistrate Judge Carlson, as well as all circuit courts that have considered the question, that the dismissal as frivolous of a case before a district court and the dismissal of a subsequent appeal in the same case should be treated as two separate "actions" as that word is used in 28 U.S.C. § 1915(g). See generally Chavis v. Chappius, 618 F.3d 162, 167-68 (2d Cir. 2010) (collecting cases).

ACCORDINGLY, on this 21st day of August 2012, **IT IS HEREBY ORDERED**
THAT the Report and Recommendation (Doc. No. 33) is **ADOPTED**, Defendant's motion
(Doc. No. 21) is **GRANTED**, and Plaintiff's in forma pauperis status is **REVOKED**. **IT IS**
FURTHER ORDERED THAT Plaintiff **SHALL** either pay the statutory filing fee or
supplement her motion for leave to proceed in forma pauperis to comply with 28 U.S.C. §
1915(g) within twenty days of the date of this order; failure to do so will result in dismissal of
this action.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania